

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

GUSTAVO MARTINEZ, Movant,	:: MOTION TO VACATE
	:: 28 U.S.C. § 2255
	::
v.	:: CRIMINAL NO.
	:: 1:08-CR-0363-TWT-RGV-5
UNITED STATES OF AMERICA, Respondent.	::
	:: CIVIL ACTION NO.
	:: 1:12-CV-1202-TWT-RGV

ORDER FOR SERVICE OF REPORT AND RECOMMENDATION

Attached is the report and recommendation of the United States Magistrate Judge made in accordance with 28 U.S.C. § 636(b)(1) and this Court's Local Rule 72. Let the same be filed and a copy, with a copy of this order, be served upon plaintiff.

Plaintiff may file written objections, if any, to the report and recommendation within fourteen (14) days of receipt of this order. 28 U.S.C. § 636(b)(1). Should objections be filed, they shall specify with particularity the alleged error(s) made. If no objections are filed, the report and recommendation may be adopted as the opinion and order of the district court and any appeal of factual findings will be limited to a plain error review. United States v. Slay, 714 F.2d 1093 (11th Cir. 1983).

The Clerk is **DIRECTED** to submit the report and recommendation with objections, if any, to the district court after expiration of the above time period.

IT IS SO ORDERED this 6th day of August, 2012.


Russell G. Vineyard
RUSSELL G. VINEYARD
UNITED STATES MAGISTRATE JUDGE

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FINAL REPORT AND RECOMMENDATION

This matter has been submitted to the undersigned Magistrate Judge for consideration of movant Gustavo Martinez's pro se motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255. For the following reasons, the undersigned **RECOMMENDS** that Martinez's § 2255 motion, [Doc. 684], as amended, [Doc. 700], be **DISMISSED WITHOUT PREJUDICE** for his failure to obey lawful Court orders.

In his initial § 2255 motion, Martinez offered only a single sentence argument for each claim, [Doc. 684 at 4], and requested an extension to file a belated brief, [id. at 17]. Accordingly, on April 23, 2012, the Court ordered Martinez to amend his § 2255 motion within thirty days by filing a brief in support of the claims listed

therein. [Doc. 687]. The Court advised Martinez that failure to file a brief within the specified period of time may result in the dismissal of this action. [Id.].

On June 12, 2012, after the Court's deadline had expired and Martinez had not filed an amendment to his motion to vacate, the Court ordered Martinez to show cause within fifteen days why this action should not be dismissed pursuant to Federal Rule of Civil Procedure 41(b) for failure to comply with a court order. [Doc. 699]. The Court warned Martinez that failure to file a response within the specified period of time may result in the dismissal of this action. [Id.]. More than fifteen days have passed, and Martinez has not responded to the Court's show cause order.

On June 17, 2012, nearly a month after the Court's deadline to amend had expired, Martinez signed an amended motion to vacate. [Doc. 700 at 13]. However, Martinez did not brief the issues as ordered or provide any factual details to support his claims. [Id. at 4-5, 7-8, 14, 17-19]. It is well settled that mere conclusory statements unsupported by specifics do not raise a constitutional issue in a habeas case. Lynn v. United States, 365 F.3d 1225, 1238-39 (11th Cir. 2004) (per curiam) (citations omitted).

Because Martinez did not file an amended § 2255 motion within thirty days as originally ordered, did not brief the issues in his amendment, and never responded to

the Court's show cause order to explain why he failed to comply with the original order, **IT IS RECOMMENDED** that this 28 U.S.C. § 2255 motion to vacate sentence, [Doc. 684], as amended, [Doc. 700], be **DISMISSED WITHOUT PREJUDICE** for Martinez's failure to follow lawful orders of this Court. See LR 41.3A(2), NDGa.

IT IS FURTHER RECOMMENDED, pursuant to Rule 11 of the Rules Governing Section 2255 Proceedings for the United States District Courts, that the Court decline to grant Martinez a certificate of appealability.

The Clerk is **DIRECTED** to terminate the referral to the Magistrate Judge.

SO RECOMMENDED, this 6th day of August, 2012.


RUSSELL G. VINEYARD
UNITED STATES MAGISTRATE JUDGE